

MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY

Santa Fe, New Mexico

October 29, 2003

AFTERNOON SESSION

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico was called to order on this date at approximately 4:00 p.m. in City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, Roll Call indicated the presence of a quorum, as follows:

Members Present:

Mayor Larry A. Delgado
Councilor Carol Robertson Lopez, Mayor *Pro Tem*
Councilor Miguel M. Chavez
Councilor David Coss
Councilor Karen Heldmeyer
Councilor Matthew E. Ortiz
Councilor David Pfeffer
Councilor Rebecca Wurzbarger

Members Excused:

Councilor Patti J. Bushee

APPROVAL OF AGENDA

City Manager Jim Romero stated that the applicants for the Stone Creek Senior Apartments water line extension (item 10, Afternoon Session Agenda) are requesting that the following item be postponed "to the second meeting in November"; however, since the Council will only be meeting once in November (on the 12th), he would suggest the matter be postponed to the December meeting.

Councilor Lopez recommended that it be tabled to the November meeting, and Mr. Romero said he would inform the applicants.

Councilor Heldmeyer moved approval of the Agenda, with the amendment that item G4 and G4a be tabled to the November 12 meeting.

[Ordinance regarding annual Water Budget Ordinance and Resolution regarding administrative regulations and procedures.]

Councilor Heldmeyer stated that there was considerable discussion at the Public Works Committee, and the consensus of the Committee was that there were two portions that were not ready to go: 1) looking at what constitutes increased water use in addition to renovations; and 2) how to handle “Plan B” over the long haul, which is where people ask for an individual water budget. She said staff feels there is not consensus at this point.

Councilor Lopez seconded the motion, which passed 6-0 by voice vote, with Councilor Chavez, Councilor Heldmeyer, Councilor Lopez, Councilor Ortiz, Councilor Pfeffer and Councilor Wurzbürger voting for, and none against. [Not present during this action: Councilor Coss.]

APPROVAL OF CONSENT CALENDAR

Upon motion by Councilor Lopez, seconded by Councilor Ortiz, the following Consent Calendar, as amended, was approved by Roll Call vote:

For: Councilor Chavez; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbürger.

Against: None.

Not present during this action: Councilor Coss.

- a) Request for Approval of Grant Award — ArtWorks Program; Oppenheimer Brothers Foundation.
 - 1) Request for Approval of Budget Increase — Grant Fund.
- b) Request for Approval of Grant Awards — ArtWorks Program; Brindle Foundation and Katherine E. Besser.
 - 1) Request for Approval of Budget Increase — Grant Fund.
- c) Request for Approval of Grant Award — Police Overtime Reimbursement; New Mexico Gang Task Force.
 - 1) Request for Approval of Budget Increase — Police General Fund.
- d) Request for Approval of Grant Award — Local Law Enforcement Block Grant Program (LLEBG); U.S. Department of Justice.
 - 1) Request for Approval of Budget Increases — Grant Fund.

- e) Request for Approval of Project Agreement — Operation Buckle Down/
Operation DWI; New Mexico Department of Transportation.
 - 1) Request for Approval of Budget Increase — Police General Fund.
- f) Request for Approval of Grant Agreement — Snow Removal Equipment for
Municipal Airport; State Department of Transportation.
- g) Request for Approval of Law Enforcement Personnel Reimbursement
Agreement — Security for Municipal Airport; U.S. Department of
Homeland Security Transportation Security Administration.
 - 1) Request for Approval of Budget Increase — Airport Enterprise Fund.
- h) Request for Approval of Title I Scenic Byways Program Grant Agreement —
El Camino Real Scenic Byway Project; New Mexico Department of
Transportation.
 - 1) Request for Approval of Budget Increase — Grant Fund.
- i) Request for Approval of License Agreement — Christmas Tree Sales on
Railyard Land at Guadalupe and Cerrillos Road; Delancey Street/New
Mexico, Inc.
- j) Request for Approval of Budget Increase — Environmental Services on
Railyard Property; Grant Fund.
- k) [Removed by Councilor Heldmeyer for discussion.]
- l) Request for Approval of Five (5) Grant Contracts — Construction Projects
and Equipment; State of New Mexico Agency on Aging.
 - 1) Request for Approval of Budget Increases — Various Funds.
- m) Request for Approval of Amendment No. 1 to Memorandum of Agreement
— Regional Operations Provider for JARC Program; Rio Arriba County/
Los Valles Transit.
- n) Request for Approval of Change Order No. 7 — Botolph Road
Improvements Project; A. S. Horner, Inc.
- o) Request for Approval of Cooperative Agreement — Juan de Dios Road
Reconstruction Project; New Mexico Department of Transportation.
 - 1) Request for Approval of Budget Increase/Transfer — Project Fund/
CIP Reallocation Fund.
- p) Request for Approval of Sole Source Procurement and Service Agreement
— Repairs/Maintenance for Mobile Radio System; Motorola.

- q) Request for Approval of Procurement Under State/Federal Price Agreements — Hardware, Software and Service Support:
 - 1) Expanets Direct
 - 2) Qwest
 - 3) Advanced Network Management
- r) Request for Approval of Professional Services Agreement — Food, Beverage and Catering Sales for MRC (RFP No. 2004/06/P); Vista Grande Catering, LLC.
- s) [Removed by Councilor Pfeffer for discussion.]
- t) CONSIDERATION OF RESOLUTION NO. 2003-96. (Councilor Chavez)
A Resolution Supporting the Establishment of a Demonstration, Display and Sales Area for Locally-made Crafts at Sweeney Convention Center, in Accordance with the City of Santa Fe's Culture, Art and Tourism Plan.
- u) [Removed by Councilor Pfeffer for discussion.]
- v) Request for Approval of Purchasing Manual Amendments:
 - 1) Section 32.3 Lease Agreements
 - 2) Section 22 Competitive Sealed Bidding for Procurement of Tangible Personal Property and Construction Services
 - 3) Section 18 Exemptions
- w) CONSIDERATION OF RESOLUTION NO. 2003-97. (Councilor Lopez)
A Resolution Endorsing and Supporting Governor Richardson's Investment Partnership (GRIP).
- x) [Removed by Councilor Pfeffer for discussion.]
- y) CONSIDERATION OF RESOLUTION NO. 2003-98. (Councilor Heldmeyer)
A Resolution Directing Staff to Incorporate the Concept of "Conditional Approved Uses" into Chapter 14 of the Santa Fe City Code.
- z) Approval of Findings of Fact and Conclusions of Law, Case #A 2003-08. Ed Grabowski, Agent for Plaza Santa Fe II LLC, Appealing the Decision of the Planning and Land Use Director.
- aa) Request from Jerry Powers for Approval of Water and Sewer Service Connections for Country Club Apartments Pursuant to Section 6 of Resolution 2002-22.

APPROVAL OF MINUTES:

Special City Council Meeting: September 29-30, 2003

Councilor Lopez moved for approval of the minutes of the September 29-30 Special City Council Meeting, as submitted. Councilor Wurzbarger seconded the motion, which passed by voice vote, with Councilor Chavez, Councilor Heldmeyer, Councilor Lopez, Councilor Ortiz, Councilor Pfeffer and Councilor Wurzbarger voting for, and none against. [Not present during this action: Councilor Coss.]

City Council Study Session: September 30, 2003

Councilor Ortiz moved for approval of the minutes of the September 30 Study Session, as submitted. Councilor Lopez seconded the motion, which passed by voice vote, with Councilor Chavez, Councilor Heldmeyer, Councilor Lopez, Councilor Ortiz, Councilor Pfeffer and Councilor Wurzbarger voting for, and none against. [Not present during this action: Councilor Coss.]

City Council Meeting: October 8, 2003

Councilor Lopez moved for approval of the minutes of the October 8 minutes, as submitted. Councilor Wurzbarger seconded the motion, which passed by voice vote, with Councilor Chavez, Councilor Heldmeyer, Councilor Lopez, Councilor Ortiz, Councilor Pfeffer and Councilor Wurzbarger voting for, and none against. [Not present during this action: Councilor Coss.]

PRESENTATIONS

Employee Group of the Month for October 2003 — Sergio Rivera, Building Structural Supervisor and Robert Medina, Mechanical Structural Specialist, GCCC Division, Parks & Recreation Department.

Mayor Delgado presented Mr. Rivera, who was also present on behalf of Mr. Medina, with a check for \$200 from the Employee Benefit Committee, certificates of appreciation and a certificate for lunch at Asado Restaurant.

Mayor Delgado said these two men were nominated because of their quick response to a fire in a custodial closet on August 12: they were able to contain the fire to the closet, thereby keeping damage to a minimum and perhaps saving lives. He said they also have always demonstrated professionalism and pride in their work no matter what job they undertake.

**Update on the Progress of the Piñon Pine Working Group.
(Shelley Nolde)**

Ms. Nolde distributed a “Piñon Initiative Status Update” and “Watershed Vegetation Management Project Status Update.”

Ms. Nolde reported that 1,200 acres have been thinned to date. She said some handwork is continuing although the machines have left for the season. She stated that Don Petersen, contractor with the Forest Service for watershed work, would return with his machinery and crews in the spring as soon as the weather permits.

Ms. Nolde stated that the burning of piles on 700-900 acres would begin as soon as there is snow on the ground.

Ms. Nolde stated that the Technical Advisory Group, which has been monitoring the work in the watershed, would issue a report by the end of November on the latest scientific results from that project.

Ms. Nolde reviewed the progress of the working group, formed by the City Council by resolution last month, which comprises people from a number of City departments. She said the group has joined forces with the State of New Mexico and Santa Fe County in order to leverage expertise and efforts.

Ms. Nolde said a steering group has been formed with State, County and City participants that is focusing on the generation and delivery of consistent messages to the public and delivering the best information possible from agencies, nurseries, etc. She said the group is chaired by Tom Mills, deputy secretary of the NM Energy, Minerals and Natural Resources Department, and members are herself; City Integrated Pest Manager Fabian Chavez; County Fire Marshal Hank Blackwell; NMSU Extension Service agent Patrick Torres; State Forestry Division representatives Fred Rossbach and Tony Delfin, and SFSWMA representative Justin Stockdale.

Ms. Nolde stated that each of the members has agreed to lead a working group to talk about different aspects of the piñon mortality problem, i.e., green waste management and potential for reuse; re-vegetation, erosion control and water conservation; forest health, fire hazard reduction, and public information.

Ms. Nolde said the steering group plans to hold a symposium or public briefing before the end of the year.

Ms. Nolde stated that, with respect to the working group, there are some issues that are peculiar to the City and County and where decisions are reserved through their governing bodies. She said those major issues have to do with

reviewing current ordinance: for the City, Escarpment and Landscaping ordinances, and for the County, their land use code.

Ms. Nolde stated that the City needs to take a hard look at what can be done on City-owned land and how the City can provide assistance to landowners both in the removal of their dead trees and in improving forest health on their land. She said the City has access to a \$100,000 hazardous fuels reduction grant that can be used on City-owned land on the eastern edge, and she is developing a work plan for review by the City Council and State Forestry Division.

Ms. Nolde said efforts have also just begun with City Parks & Recreation crews removing dead trees on other City lands.

Ms. Nolde said the City internal working group would be preparing proposals for the Council's consideration on what else can be done to assist citizens and reduce problems on City land.

Ms. Nolde stated that she has applied for an additional \$200,000 grant in hazardous fuels reduction, and would know by mid November whether the City would receive those monies.

Deputy Secretary Mills stated that the Richardson administration wanted to start with Santa Fe because "we have flown over four million acres in the state to assess the problem. There are 700,000 acres, minimum, of dead piñon trees, most of that in Northern New Mexico." He said the State needs a model that can be used in every community in the state affected by this problem, and thought it made sense to start here because the City and County have already taken a leadership role to identify the need and to respond thoughtfully.

Deputy Secretary Mills said the Thaw Foundation has offered to underwrite financially a piñon summit that would bring together experts and the public to discuss concerns and share consistent, accurate scientific information on what options are available.

Deputy Secretary Mills also noted that, last week, the Youth Conservation Corps Commission met. He said the Governor had allocated \$50,000 for a piñon response, and the Commission decided to leverage that by adding \$50,000 of YCC money. He said the Commission has put out an RFP and it is hoped that both the City and County together will respond in order to enlist the services of youth in the community to help next spring and summer with restoration, rehabilitation and other efforts to deal with this problem.

Deputy Secretary Mills said two divisions in his department — the Forestry Division and the Energy Conservation & Management Division — are very concerned about what can be done to make economic uses of all the harvested fuel. He said, "I'm here today also to offer to work with the City to explore the biomass opportunities of this fuel source as we go down the road."

Responding to a request by Councilor Chavez that phone numbers be provided, Ms. Nolde stated that she could be reached at 955-3118, and Fabian Chavez could be reached at 955-2114. She said George Duda at the State could be reached at 476-3326.

Councilor Lopez asked Ms. Nolde to post her report on the City Web site along with future monthly reports.

Councilor Lopez stated that neighborhood work parties have already started in her district, where people get together and clean out open space, cut down trees, etc. She said there are a lot of neighborhoods willing to do that, and asked Ms. Nolde to develop a place where people can call for that assistance.

CONSENT CALENDAR DISCUSSION

Request for Approval of Two (2) Grant Agreements — Construction and Other Projects; State of New Mexico Department of Finance and Administration.

1) Request for Approval of Budget Increases — Various Funds.

Councilor Heldmeyer stated that there was some confusion at the Public Works Committee about what some of this money was for, although most of that has been clarified in today's packet. She said the one item still not clear to her is the Santa Fe Health Complex, and asked Engineering director Robert Romero to comment.

Mr. Romero responded that the City is working with the DFA, but DFA at this point does not know where the money is supposed to go. He said they are still trying to work with the legislator who had the money appropriated. He added that DFA is not even sure if this item requires City Council approval since it could be a County matter.

Councilor Heldmeyer asked if it would be feasible for the Council to approved everything except this particular item, then act on that item later if necessary.

Mr. Romero responded that, according to DFA, "if we were to pass it, and it is with the City, everything would be fine, but if it goes to the County, then the County would have to go through the same process again and everything that we've done would just be null." He said DFA would prefer that the Council pass it, since "it's not going to hurt anything."

Councilor Heldmeyer commented that she was leery of approving money without knowing its purpose, "since there are a couple of health projects out there

that have major strings attached, and I'd want to know that we're not picking up any of those strings."

Councilor Heldmeyer moved to approve this item with the exception of the Santa Fe Health Complex; and if more information is forthcoming on that, the Council can pass it at a future date.

Councilor Lopez seconded the motion, which passed on the following Roll Call vote:

For: Councilor Coss; Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Wurzburger; Councilor Chavez.

Against: Councilor Pfeffer.

Public Hearing at November 12, 2003, City Council Meeting:

BILL NO. 2003-38: An Ordinance Amending Various Sections of 18-11 SFCC 1987 Regarding Lodgers Tax. (Mayor Delgado, Councilor Wurzburger, Councilor Lopez, Councilor Pfeffer, Councilor Coss and Councilor Bushee.)

- 1) CONSIDERATION OF RESOLUTION NO. 2003-____.**
(Mayor Delgado, Councilor Lopez, Councilor Coss, Councilor Pfeffer and Councilor Wurzburger)
A Resolution Authorizing the Development and Construction of a Civic and Convention Center Within the City of Santa Fe.

Councilor Pfeffer said he spoke with Councilor Wurzburger about this matter, and he thought her phraseology was superior to his, and so would defer to her.

Councilor Wurzburger noted that a series of amendments were adopted at the Public Works Committee that some Councilors have not seen; furthermore, they are not in tonight's packet and so cannot be discussed.

City Attorney Bruce Thompson clarified that the requested action tonight is only to publish notice of public hearing.

Councilor Wurzburger moved for approval. Councilor Pfeffer seconded the motion, which passed on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Chavez; Councilor Coss.

Against: None.

**CONSIDERATION OF RESOLUTION NO. 2003-99. (Councilor Coss)
A Resolution Approving a Rebate Program for Two Water Saving
Devices; Washing Machines and Hot Water Recirculators.**

Councilor Pfeffer congratulated Councilor Coss and the Water Conservation Committee "for their continued good efforts."

Councilor Pfeffer moved for approval. Councilor Lopez seconded.

Councilor Lopez asked staff to describe these particular devices.

Dan Ransom of the Water Division stated that one of the washing machines (on display outside) uses 12.5 gallons per load, and others use 18.5 gallons and 21 gallons per load; but when compared to an average washing of 40 gallons, that is a major savings of water.

Mr. Ransom said hot water recirculators could also save a lot of water, particularly with the cold weather coming up.

Mr. Ransom said the washing machines on display cost about \$1,000 each, but others run as low as \$600.

The resolution was adopted on the following Roll Call vote:

For: Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger; Councilor Chavez; Councilor Coss; Councilor Heldmeyer.

Against: None.

**CONSIDERATION OF RESOLUTION NO. 2003-100.
(Councilor Bushee, Councilor Coss, Councilor Chavez, and
Councilor Wurzburger)
A Joint City/County Resolution in Support of a Biomass District
Energy System.**

Councilor Pfeffer stated that he wished to propose an amendment to this joint resolution, which has already been adopted by the County Commission, realizing it would have to go back to the Commission for review of the change.

Councilor Pfeffer moved approval of this resolution with the following amendment to page 2, line 10:

...that Santa Fe County and the City, in order to present to the Governing Body the feasibility of a biomass district energy project, should consider entering into an agreement....

Councilor Wurzbarger seconded the motion.

Councilor Coss recommended that the amendment instead read:

that Santa Fe County and the City, in order to present to the *respective governing bodies* the feasibility of a biomass district energy project,
should consider entering into an agreement....

The amendment was accepted as friendly.

The resolution, as amended, was adopted on the following Roll Call vote:

**For: Councilor Ortiz; Councilor Pfeffer; Councilor Wurzbarger;
Councilor Chavez; Councilor Coss; Councilor Heldmeyer; Councilor Lopez.**

Against: None.

MATTERS FROM THE CITY MANAGER

None.

MATTERS FROM THE CITY ATTORNEY

None.

MATTERS FROM THE CITY CLERK

None.

COMMUNICATIONS FROM THE GOVERNING BODY

Mayor Delgado

Mayor Delgado introduced a resolution calling for a regular municipal election to be held March 2, 2004, for the purpose of electing four City Councilors from districts and one Municipal Judge at-large.

Mayor Delgado announced that Mexican president Vicente Fox will be arriving in Santa Fe on November 4, and on November 5 will be speaking on the Plaza in the afternoon between two and four o'clock. He asked Councilors to please attend.

Councilor Coss

Councilor Coss asked that the Transit program be brought forward to the Public Works Committee regarding their use of some Lodgers Tax monies to deal with ADA issues on Santa Fe Trails.

Councilor Coss asked that Monday's study session on the civic center be more in the style of a work session, with Councilors and others sitting around a table.

Councilor Coss urged Councilors to attend the Veterans Day ceremonies on the Plaza.

Mayor Delgado invited Councilors to follow that with a visit at VFW Post 2951.

Councilor Pfeffer

Councilor Pfeffer urged people to go to the GCCC public skating event and Halloween party this Friday at three o'clock. He said people wearing costumes would be admitted free.

Councilor Pfeffer stated that he wished to change his vote made at the last Council meeting with respect to the Plaza Landscape and Stage Improvements.

Councilor Pfeffer moved for reconsideration of the action the Council took on that item, inasmuch as he was in the majority.

Councilor Ortiz seconded the motion, inasmuch as he had been the lone vote against it.

Councilor Pfeffer stated that he honestly concurred with Councilor Ortiz in his presentation on the gazebo issues and the negative impact that the redesign of the Plaza would have on Fiestas and the traditional events that occur there. He said, "I was torn between feelings of betrayal. I moved an amendment, which was accepted by the maker of the motion last time. I felt it would have been a betrayal to the Council for me to vote no on something I amended, and I didn't want to go there. At the same time, I'm feeling very strongly that the gazebo as designed, in the absence of a firm commitment by the Council, that the Plaza stage will in one form or another remain in the same place that we're putting the gazebo, what we're doing is threatening the traditional uses of the Plaza, mostly threatening the Fiestas events, and that's a place that I do not want to go."

Councilor Pfeffer said his motion to reconsider would be for the purpose of having the Council affirm that "if we do the gazebo as we've said, that indeed staff will present to us not a variety of options of where to put it or put a stage on the rest of the Plaza, I believe they've already done that, but that we confirm that

we will have a temporary stage on the same location as it's always been, where the gazebo is. They've already done the costing work on it, it's completely feasible. I think it's a win-win where the folks who've raised money and proposed that gazebo will have it there all year round, appearing exactly as they've had it, with the removable columns that we've already agreed to. We'd have a temporary stage on top of it for a few days a year that will keep the traditional uses of the Plaza intact there."

Mayor Delgado commented that he thought that already was the plan, and City Manager Jim Romero said that was correct. He added that, in accordance with direction received from the Council at that meeting, staff is looking at several different options besides having a temporary stage on the gazebo itself, and plans to get input on the options from Fiesta Council and the committees in charge of Community Day, Spanish Market, etc.

Councilor Pfeffer said his concern is location. He stated that, having been opposed to the notion of a gazebo in that location, he was convinced that staff has already come up with a solution. He added, "I don't have the confidence that we've decided we're going to affirm to have a stage in that location. We're facing options this, options that. I want to put this whole issue to bed. Yes, we will have a stage there, yes we will have a gazebo there at the same location. It's technically, financially do-able and I'd like to see us agree to that."

Councilor Ortiz asked Mr. Romero if staff has already made a presentation to the Fiesta Council, and Mr. Romero responded that he did not believe so. Councilor Ortiz noted a letter from the Fiesta Council indicating that the gazebo is insufficient for their purpose, which he personally thought was the most important purpose in terms of the use on the Plaza.

Speaking to the motion for reconsideration, Councilor Ortiz said he previously had qualms about revisiting this "nerve-sensitive issue for this community," but supported the motion "if for any other reason than that we put back the decision and send those people back to achieve a workable compromise." He commented that the Plaza should be a focal point of community and pride, "and the way that this issue has developed, and the way the divergent camps have presented their position, whatever gets put up is going to be a source of irritation now for people in Santa Fe... and the fact that it's happening on our Plaza, that has been used for centuries, is really shameful."

Councilor Heldmeyer questioned the need for the motion to reconsider, since staff plans to do a presentation of the options to the Council at the November 12 meeting, and so the Council will be taking action at that time anyway.

Councilor Pfeffer responded, "we have all these options, and that's what I don't feel comfortable about. I want to reconsider that so that what we see is, what are we going to do at that location?" He said the letter from the Fiesta Council states that the Fiesta Council unanimously opposed the proposed

gazebo at its regular general meeting of October 20. He commented, "That's strong enough for me."

Councilor Heldmeyer said she continued to be confused over the need to reconsider, since it wasn't necessary — the Council would be taking action on November 12, and Councilor Pfeffer could introduce a motion at that time on his preferred option.

Councilor Lopez objected to the term, "traditional uses." She pointed out that there was a gazebo on the Plaza until 1912, and its uses were defined by decisions made at the time. She said the use of the term "somehow suggests that someone's position is more appropriate because they're defending the tradition." She stated that she would prefer that people focus on whether or not current needs are being served, which is the proposed discussion at the next meeting.

The motion for reconsideration failed to pass on the following Roll Call vote:

For: Councilor Pfeffer; Councilor Coss; Councilor Ortiz.

Against: Councilor Wurzburger; Councilor Chavez; Councilor Heldmeyer; Councilor Lopez.

Councilor Chavez

Councilor Chavez announced that he and his wife became grandparents last Saturday to Naomi Elizabeth. He congratulated his daughter Elena and her husband, Brian Tercero, as well as his son-in-law's parents, Frank and Arlene Tercero.

Councilor Wurzburger

Councilor Wurzburger stressed to City Manager Jim Romero the importance of Councilors having input into the scheduling of the economic development plan rollout. She said she has just learned from Steve Whitman that there are plans to do it in November, and recalled discussion with Mr. Romero that this may not be the best time for that because the Governing Body hasn't yet seen it.

Councilor Wurzburger asked Mr. Romero to poll Councilors on a specific date where collective participation will be possible.

Councilor Lopez

Councilor Lopez reminded Councilors that this body passed a resolution establishing a bike and trail advisory committee to help oversee the expenditure of \$1.5 million in the CIP plan, and it is important that the money is spent appropriately. She said a number of people are interested in serving.

Councilor Lopez also noted that, on November 12, Councilors have a chance to be a “principal for the day” in the public schools. She asked Councilors to consider doing this, since it would show support for the schools.

Councilor Lopez announced that Mr. Romero is working hard to create the internal blue ribbon committee that will be looking at funding for the Santa Fe Community Library, as well as a blue ribbon committee to help the City identify grants and funding opportunities.

Councilor Lopez stated that DeVargas Middle School is trying to create a mariachi band, and is offering stuffed animals for \$20 each.

Councilor Heldmeyer

Councilor Heldmeyer said the Children & Youth Commission last night awarded the Bernie Beenhouwer Certificate of Appreciation to Roland Villa for being an outstanding music teacher. She stated that Mr. Villa unfortunately passed away last week, so this was a bittersweet occasion.

Councilor Heldmeyer introduced a resolution to continue the essential work and services of the Santa Fe County Maternal and Child Health Planning Council, since Governor Richardson is considering eliminating these councils in order to save money.

Councilor Heldmeyer announced that the City has been awarded a \$616,000 Early Learning Opportunities grant for early childhood in Santa Fe County.

Councilor Heldmeyer said the Rotary Club is collecting used instruments of all kinds — band instruments, string instruments, even rhythm band instruments — which they will then give out to the schools to help the music programs. She thanked Chief Lennen, a member of the Rotary, for donating her saxophone to this program.

Councilor Heldmeyer introduced the Safe Drinking Water and Wellhead Protection Ordinance, which has been ten years in the making.

RECESS: 5:07 p.m.

EVENING SESSION

The Evening Session of the City Council Meeting was called to order at approximately 7:00 p.m. in City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, Roll Call indicated the presence of a quorum:

Members Present:

Mayor Larry A. Delgado
Councilor Carol Robertson Lopez, Mayor *Pro Tem*
Councilor Miguel M. Chavez
Councilor David Coss
Councilor Karen Heldmeyer
Councilor Matthew E. Ortiz
Councilor David Pfeffer
Councilor Rebecca Wurzbarger

Members Excused:

Councilor Patti J. Bushee

PETITIONS FROM THE FLOOR

None.

APPOINTMENTS

None.

PUBLIC HEARINGS

[Public Hearings were reprioritized.]

CONSIDERATION OF BILL NO. 2003-33: ADOPTION OF ORDINANCE NO. 2003-34. (Councilor Chavez, Councilor Heldmeyer, Councilor Lopez and Councilor Bushee.) An Ordinance Amending Sections 20-4 and 20-18 SFCC 1987 Regarding Graffiti and Spray Paint Sales.

City Planner Jeanne Price presented an overview of this bill and its highlights. She said there were two sections that referred to graffiti, and those have been combined in a more sensible way; one dealing with graffiti and injuring property, and the other regulating the sale of spray paint.

Ms. Price stated that amendments resulting from the July public hearing at the Public Works Committee were reflected in the bill.

There were no speakers from the floor either for or against this bill.

Councilor Lopez moved for approval. Councilor Ortiz seconded the motion.

Councilor Lopez stated that the earlier version of this bill contained much stricter requirements, including that every spray paint sale be recorded. She commended the Police Chief Beverly Lennen and others who worked on this, because the result is more palatable to the community.

Councilor Lopez reported, on a sad note, that when neighborhoods recently began cutting down dead piñon trees in her district, “we were shocked to find the number of cans that obviously were being used as inhalants.” She said this has become a tremendous problem in the community and she could not even begin to comment on the health risks associated with inhalants of this kind.

Councilor Ortiz proposed the following amendment:

Page 6, lines 13-17 (Notice Provision, paragraph C)

Strike the language and insert the following:

City ordinance prohibits the sale of glue or spray paint to persons under the age of 18, and the misuse of these products for graffiti, vandalism and/or inhalation can result in penalties of a \$500 fine; and/or 90 days imprisonment; and/or community service, and/or the cost of the property damage.

The amendment was accepted as friendly.

Councilor Ortiz proposed the following amendment:

Page 6, line 24, continuing to page 7, lines 1-3

E.. ~~Or, A person, firm, corporation, partnership or other entity engaged in the retail sale of glue or spray paint shall program the electronic checkout system to read the universal product code of each glue and spray paint product, stop the checkout process upon identifying such code and prompt the employee to check identification and confirm the legal age of the purchaser prior to proceeding with the sale.~~

The amendment was accepted as friendly.

Addressing his first amendment, Councilor Ortiz said Police Chief Lennen was interested in terms of an educational tool to combat the use of these products by minors, and he thought that would be addressed by including

language about the misuse of these products for graffiti, vandalism and/or inhalation.

Councilor Ortiz said he made his second amendment to correct language that seemed to say that the employee would be required to check identification for every sale of every kind of glue or spray paint. He commented that this change addresses a concern that there could be technical violations of this ordinance with no practical result.

Councilor Heldmeyer expressed concern about the second amendment, which states that a store either puts up a sign or, if there is an electronic checkout, the cashier checks age. She said this leaves out all of the retailers that don't have that prompt capability in their electronic system. She said paint stores wouldn't have it because they don't check for age-related purchases (e.g., alcohol and tobacco).

Councilor Heldmeyer said her point was that a sign is not enough: "I'm saying that, if somebody comes in and they look 15, and they come up to buy spray paint, and it's the kind of store that doesn't have the electronic system, I want them to be required to check their age."

Councilor Ortiz responded that he thought that would be satisfied by paragraph A, which states that "no person shall knowingly sell, offer to sell, barter or give any glue or spray paint to any minor."

Councilor Heldmeyer said that was true, but nonetheless, the amendment would exempt many retailers from having to check age, "and if they don't check it, then they could make the argument that they're not knowingly doing anything."

Councilor Pfeffer said he thought the sign posted at the checkout would be enough in those instances where retailers don't have an electronic prompt system.

Councilor Chavez suggested that a provision be added requiring a review after a year or two years so that changes could be made if deemed necessary.

Ms. Price noted that some City ordinances contain such a provision, and certainly that could be inserted here.

Councilor Ortiz proposed the following amendment, which would create a Section 14 on page 8:

Review. The Governing Body shall review and approve any changes to this ordinance 12 months after the effective date thereof.

The amendment was accepted as friendly.

Councilor Chavez stated that, in response to concerns expressed that youth are being singled out by this ordinance, he said it was not his intention to single out any segment of the community, but rather to focus on a problem that exists and is considered a nuisance. He pointed out that a number of people doing graffiti are not minors, as it turns out.

Councilor Heldmeyer proposed the following amendment to page 7, end of line 3:

... proceeding with the sale. Or, if such a system is not available, the employee selling such products to a person who appears to be under 25 years of age shall check identification and confirm the age of the purchaser prior to proceeding with the sale.

Councilor Lopez said she was not sure how the City would enforce this provision, nor was she sure that this would have the desired impact.

The amendment was *not* accepted as friendly.

Councilor Heldmeyer moved this amendment. Councilor Chavez seconded the motion for discussion.

Councilor Coss noted a letter from the International Mass Retail Association expressing concern about stopping the checkout procedure for every purchase regardless of the obvious age of the customer. He said he thought this amendment would speak to that concern. He added, "In a way, it just reiterates what we want to do — make sure it's clear that they're required to do that so that we don't set up a situation where people find the stores where it's a little easier to get it."

Councilor Wurzbarger stated that, as she reads the ordinance, compliance would appear to require the clerk to stop the checkout procedure for every purchase regardless of the obvious age, which would appear to be an argument against it.

Councilor Wurzbarger said she thought Section 20-18.5 would speak to Councilor Heldmeyer's concerns, because it states, "Any person selling goods may refuse to sell glue or spray paint to any person who is unable to produce an identity card."

Councilor Heldmeyer pointed out that the language says, "may refuse," meaning that the seller isn't required to refuse. She questioned why this was "a big deal, unless you're trying to give a competitive advantage for selling these things from one kind of store over another."

The amendment failed to pass on the following Roll Call vote:

For: Councilor Chavez; Councilor Coss; Councilor Heldmeyer.

**Against: Councilor Wurzburger; Councilor Lopez; Councilor Ortiz;
Councilor Pfeffer.**

**The ordinance, as amended, was adopted on the following Roll Call
vote:**

**For: Councilor Chavez; Councilor Coss; Councilor Heldmeyer;
Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger.**

Against: None.

**CONSIDERATION OF BILL NO. 2003-34: ADOPTION OF ORDINANCE
NO. 2003-____. (Councilor Heldmeyer and Councilor Chavez)
An Ordinance Creating a New Section 14-8.15 SFCC 1987
Regarding Transportation Impact Studies; Transportation
Requirements and Amending Section 23-3.1 Regarding Curb Cut
Permits. (Postponed at October 8, 2003, City Council Meeting.)**

**a) CONSIDERATION OF RESOLUTION NO. 2003-____.
(Councilor Heldmeyer and Councilor Chavez)
A Resolution Adopting Administrative Procedures for
Transportation Impact Studies.**

City Traffic Engineer John Nitzel expressed his thanks to Jeanne Price, Bob Siqueiros, Anne Lovely, Jim Salazar and the Planning Commission for their work. He said the Planning Commission reviewed this over two meetings and unanimously approved it. He acknowledged the valuable input of developer representatives Jim Siebert and Linda Tigges.

Mr. Nitzel reported as follows: "In summary, at this time the City really doesn't have any substantive code requirements or any administrative procedures in writing for the assessment of traffic impacts for proposed developments. This bill will amend Chapter 14 to require transportation impact studies for specific conditions outlined for development review or for building permits. It formalizes many of procedures that aren't in writing and gives additional detail and direction regarding how they should be prepared and processed as we go through the development process. Chapter 23 is also amended, which is an existing section that deals with curb cut permits, and we've basically updated that a little to provide for historic considerations, which isn't in there now, along with an expiration date and a few other things that are minor."

There were no speakers from the floor.

Speaking to one major reason for this bill, Councilor Heldmeyer said that, in her three years on the Planning Commission, there were countless instances where the chairman would ask where the traffic plan was, and staff would respond that code didn't require one, "and it'd be kind of a seat-of-the-pants decision who would have to do one and who wouldn't have to do one."

Speaking to another reason for the bill, Councilor Heldmeyer cited the case where Samon's was redeveloped into Alfalfa's grocery store, and concerns over "the fact that you could have such a major change in use, but as long as a variety of uses were listed under the code, it wasn't seen as something that required a new traffic plan, even though the traffic was substantially heavier." She said this bill would deal with those situations in a more consistent and less subjective way.

Councilor Heldmeyer moved for approval. Councilor Chavez seconded the motion.

Councilor Ortiz observed that there would be a significant increase in the responsibility for individual building permits — as he sees it, if someone has a building permit, the applicant will be responsible for paying for a traffic impact study.

Mr. Nitzel clarified that this would only occur if the 25-trip threshold were exceeded.

Councilor Ortiz asked about home businesses — if he changes his house into a home office, wouldn't that generate an increase in trips, and would a traffic impact study be necessary.

Mr. Nitzel responded that it wouldn't be likely, unless someone changed their home into a doctor's office, for instance.

Councilor Ortiz moved an amendment to page 4, line 2:

...if the proposed development building permit creates an expected trip generation during....

Mr. Nitzel said that would have the intended effect.

The amendment was accepted as friendly.

Councilor Ortiz commented that a plain reading of the new language on page 8, line 7, "means that if I want a curb cut, and my curb cut is on a street, I've got to somehow show that I'm not going to have traffic that gets onto a city street for that curb cut? That's the whole point of me having a curb cut, isn't it?"

[Reference: "C. Access permits for drive-in uses shall stipulate that traffic from the drive-in site shall not spill out into a city street."]

Mr. Nitzel responded that this has been a condition of approval on driveway permits for years. He cited the Taco Bell on Cordova Road/Cerrillos Road, where cars are lined up on Cordova Road as far back as the railroad tracks on some occasions.

Councilor Ortiz expressed concern about the passing of laws that address a worst-case scenario, yet end up applying to virtually everyone because they are general and over-broad.

Councilor Ortiz suggested an amendment to Paragraph C to read:

C. Access permits for drive-in uses on any commercial project or for any project requiring development review approval shall stipulate that traffic from the drive-in site shall not spill out into a city street.

Councilor Ortiz said, "So it's not just the pet store that's on Agua Fria Street that wants a curb cut, and under the language would be denied for that because they will not be able to stipulate that their access permit for drive-in uses will not spill out into a city street."

Councilor Lopez agreed with Councilor Ortiz. She said the language as written would not address the City's traffic problems: "For example, Whole Foods and their traffic study, which we accepted and approved. We have a continuing situation where the traffic spills out into the street, and we don't really, even with passing this, have a remedy. So I agree we're trying to deal with something with a broad brush when, in my view, the problems are much more when we accept those traffic studies or the criteria... and then we find out that they're really not true, and we have absolutely no mechanism to go in and deal with it.... When I look at what's broke in our system, I don't see it as being this. I see it as other impacts, and I'm not sure if this is really going to get at those things that we want to get at."

Councilor Lopez pointed out that the reality of the Taco Bell situation on Cordova Road is that it happens perhaps twice a day.

Councilor Heldmeyer proposed amending Paragraph C on page 8 to read:

C. Access permits for drive-in window uses...

Councilor Ortiz said that would speak to his concerns.

The amendment was accepted as friendly.

Councilor Ortiz proposed an amendment to Paragraph D, line 10, page 8:

...for determining if additional approvals (historic curbs, historic sidewalks, historic landscaping, historic walls) are necessary for compliance....

Councilor Ortiz said this would make it clear what applicants in the historic district would have to check into.

Councilor Heldmeyer said that would be acceptable with the following change:

additional approvals (such as historic curbs, historic sidewalks....

Councilor Heldmeyer pointed out that somebody might want to put a driveway where there is a shed, for instance.

The amendment was accepted as friendly.

Speaking to page 23 (packet page) of the Administrative Procedures, paragraph 8 (Study Area Boundaries), Councilor Ortiz stated that, as he understood it, someone who thinks they are subject to this traffic impact ordinance has to have a pre-submittal meeting with the traffic engineer. He stated that he also understood that the study area boundary has implications for the amount of impact fees someone would have to pay — in other words, when the City comes up with fees or a schedule, not only is the person going to be required to do on-site traffic improvements, they will also have to do off-site traffic improvements based upon the study area boundary.

[Reference: “8. Study Area Boundaries. The Study Area boundaries shall be determined at the Transportation Impact Study pre-submittal meeting and will include all roadways and transportation routes providing access to the site and surrounding transportation system. The Study Area boundary may be changed at a later date should concerns arise as determined by the City Traffic Engineer.”]

Mr. Nitzel responded that this was fairly accurate, but explained that, when he was a consultant for the private sector, “one of the first things I did was to find out how much we need to study — what is the study area boundary — and so I would routinely meet with the government entity and ask, what do you want us to study? And that’s what this does.”

Councilor Ortiz said he thought that was okay, but was concerned that the way this interplayed with the imposition of traffic impact fees would be dependent upon how large or small the study area boundary was.

Councilor Ortiz pointed to two ambiguities in the language: 1) everything could be defined as a “surrounding transportation system” if one were to take a

broad approach; and 2) even after the pre-submittal meeting, after the applicant and traffic engineer have decided on the study area, a Councilor or someone could approach the traffic engineer and say, "Hey, wait a minute, our neighborhood is up in arms about this and we weren't taken into consideration, and I want you to extend this study area boundary to include the entire neighborhood and not just these five streets."

Councilor Ortiz commented that, by giving Mr. Nitzel the authority through this ordinance, "in some ways it has made your job harder, because you're going to be caught between a rock and a hard place."

Councilor Ortiz cited St. Michael's High School, which had to pay a traffic impact fee in order to add a portable. He said the fee wasn't applied to Botolph Road or to any of the surrounding streets that might be impacted. He questioned how Mr. Nitzel would handle such a situation.

In the course of discussion, Mr. Nitzel explained that mitigation measures are only needed if there is a failure in an intersection, for instance, and a traffic signal has to be added. He stated that, if it has to meet the level of service criteria contained in the ordinance, the language refers to whether or not something fails, and if it doesn't, then the developer doesn't have to do anything. He said, "If we define the study area, say, to be from St. Michael's clear to the whole length of Siringo Road, but there's no failures, they don't have any mitigation measures because nothing is broken."

Councilor Ortiz proposed the following amendment to paragraph 8 (Study Area Boundaries) after the first sentence:

...surrounding transportation system, using a commonsense or reasonable basis method. The Study Area boundary may be changed at a later date should extraordinary or unforeseen concerns arise as determined by the City Traffic Engineer.

The amendment was accepted as friendly.

Mr. Nitzel commented, "That's exactly what we do right now, so I appreciate that."

Mr. Nitzel referred to a revised fee schedule, which he said was discussed at length at the Public Works Committee last April. He stated that the Planning Commission also went through the schedule.

Councilor Pfeffer stated that he had so many questions that he was not sure this ordinance was ready for adoption. He reviewed his questions as noted and stated that he did not want staff to respond at this meeting.

Page 1 of ordinance at bottom: "General design requirements. Transportation systems shall be designed and improved to comply with adopted City plans, including but not limited to general plans, arterial road task force plans, Southwest Master Plan, bicycle route plan and City traffic calming program." He said there is a reference to the City's traffic calming program in paragraph 21 of the regulations, and it was not clear to him that a new development or a new building permit would be under this, to be required or not required, to do traffic calming as a part of design and improvement compliance.

Page 2 at top: it says "City plans including but not limited to," and that seems to be rather open-ended as to what might be determined to be required in a traffic study.

Bottom of page 6, line 25, Building Permit applications: "This paragraph shall apply if approval of a review body is not required....the City Traffic Engineer shall review and approve the transportation impact study and may request additional information or revisions in order to satisfy City codes or general traffic standards accepted as city practice." Councilor Pfeffer said he thought this would give Mr. Nitzel's office too much discretion, since it does not specify or limit what would be required, nor does it set a timeline or how frequently additional information may be required.

Fiscal Impact statement, page 14 or 15: "The annual projection would be \$45,000 or \$50,000 per year," which he assumes is one staff member. Mr. Nitzel clarified that it would be a half of an engineer with benefits. Councilor Pfeffer said, "My only thought is to require this of developments, however small, as long as there are 25 vehicle trips per hour, is going to kick in a heck of a lot of staff time for review, especially when we go into the 15 pages and 30 paragraphs of the regulations, which require incredible amounts of information. I find it hard to believe that this could be accomplished in any kind of timely fashion."

Mr. Nitzel said the 25 trips requirement has been followed for the past five or six years, so he hasn't changed this at all: "It's just put in writing for the first time. And it's consistent with the State's Subdivision Act that the Department of Transportation and the counties utilize."

Referring to the administrative regulations, Councilor Pfeffer noted that paragraph 4 states that "the information provided in the traffic impact study shall include the information outlined in the following sections," and paragraph 8 says that the "study area boundary may be changed at a later date should concerns arise as determined by the City traffic engineer." He remarked, "I would not want to be the City traffic engineer, who is empowered to determine that you need to change your boundary after I've done my study, you know, \$20,000 or \$30,000 later." He said nowhere does it say how often the engineer would find someone has to increase their boundary, how far the boundary would be increased, etc. He said he thought this an inordinate amount of discretion to be placed on staff.

Referring to paragraph 9, Councilor Pfeffer noted the following: "Provide information about road and intersection geometrics, traffic controls, including without limitation signage, pavement markings, speed limits, parking restrictions...etc." He commented that all of this makes sense, but it also says under that in paragraph 11, "existing and proposed site uses, include an identification of the existing land use and proposed land use for the highest potential land use based on zoning....etc." He noted that paragraph 12 speaks to "existing and proposed land uses in the study area...document any vacant land or potential redevelopment that may result in change in traffic volume conditions within the study area during the period of study. Perform and provide trip generations on these parcels." He questioned why that should happen on properties that are not part of the development plan. He said it sounded like someone would be required to do a traffic generation study for every piece of vacant land that conceivably could be built on within the study area. He commented, "That's an enormous amount to put on somebody who's going to do a little drive-up thing or something like that."

Councilor Pfeffer noted that the language goes on to say, in paragraph 9, "provide information about identified transportation facility improvements by government agencies," and asked if that includes federal highways and interstates and the like.

Mr. Nitzel stated that this is already being done on a routine basis, and doesn't represent any change whatsoever. He commented that virtually every study the City gets already follows this practice. He cited Lee Clodfelter's property on Rodeo off of St. Francis, where the Planning Commission and Council made their decisions based on state-funded improvements. He said this language allows developers to piggyback onto improvements that the State plans, for instance, and so they need to identify them.

Councilor Pfeffer commented to Mr. Nitzel that sometimes it is difficult to get information out of a state or federal agency on what study has been done on a given intersection, or it is so enormous it becomes cumbersome. He recalled that, as a Planning Commissioner, a lot of the delay and ability to address a project has been from an incomplete traffic study, etc., "and that month after month the traffic study would be the issue."

Councilor Pfeffer said perhaps things would move faster with a full time engineer rather than half of one, "but I'm just seeing enormous amounts of imposition here, and maybe the way we've been doing it now is overly burdensome. Maybe we ought to be looking in that direction."

Councilor Pfeffer referred to page 8, paragraph 17, in terms of permitting trip generation reduction, and noted that "anticipated trip reduction assumptions must be discussed and approved by the City traffic engineer prior to the preparation of the traffic study to be considered." He asked, "How can one do that without

doing the study? It seems to prohibit credit if your study determines that we're actually going to generate less traffic than was on the site before."

Mr. Nitzel responded by noting that one study reduced the traffic by 50%, but the applicants never told staff about it and staff never caught it, "and so we get blindsided by these. The intent of the up front meeting is for them to bring these things to us and we can discuss it."

Mr. Nitzel commented that many of the concerns expressed by Councilor Pfeffer are already covered in the scoping meeting, where everybody learns the ground rules.

Councilor Pfeffer commented about the ordinance in general, "I'm just thinking this is huge — there are so many pages and so many paragraphs, I as an architect needing to do a small project that may be just a retail store, to have to come up with all of this, and that the discretion is entirely on the office of the City traffic engineer, I think this needs to be reconsidered in a very serious way."

Councilor Chavez noted that Councilor Pfeffer voted for this ordinance at the Public Works Committee meeting. He suggested that there had been ample time to meet with staff as well as to discuss this at the committee level before tonight's meeting in order to bring forward amendments. He questioned why Councilor Pfeffer was "tearing this apart now, and claiming that staff is not the appropriate place to make these determinations — it's not our place to do that. We set policy, and staff implements it."

Councilor Pfeffer pointed out that the Public Works Committee adopted this six months ago, and he doubted he was looking at that version tonight.

Councilor Wurzbarger noted that the purpose of this ordinance was to codify current practice and make things easier; "but the more I've heard tonight the less easy it feels to me.... and I am truly concerned about the unanticipated consequences on the smaller guy, the smaller business or the smaller home."

Councilor Wurzbarger asked if this document would have resulted in the kind of impact study that would have been required of Whole Foods — which, as previously discussed, "didn't work."

Mr. Nitzel responded that there is more emphasis in this document with pedestrian safety and transit issues. He commented that perhaps one of the problems with the Whole Foods study was "we didn't look at the right things because we didn't have it in writing."

Councilor Wurzbarger asked Mr. Nitzel how much a study would cost, more or less, and Mr. Nitzel estimated that a study could cost anywhere from \$500 to \$600 for a "small simple one," but a "garden variety study" could perhaps cost

\$3,000 to \$5,000. He said a study for a fast food restaurant, on the other hand, could run \$500,000 to \$750,000.

Councilor Wurzbarger asked why, instead of a requirement for a multi-page document by hired consultants, staff could do that job instead, and Mr. Nitzel responded that it would take additional staff, including people to do traffic counts. He said there are also confidentiality concerns within companies that could be breached. He added that he would personally like doing traffic counts, since then it would eliminate the “them versus us” mentality that happens with some developments.

Regarding the ordinance itself, Councilor Wurzbarger commented that this seemed well intentioned from a public policy perspective, but “it has gone awry or is about to go awry. The idea of not knowing the same kind of process that would affect a small project as a large project, starting off at 15 pages, with the kinds of ambiguities that have been pointed out here, causes me grave concern.... I don’t want to support it in this form at this point.”

Councilor Heldmeyer reminded Councilors that this was postponed from an earlier Council meeting because people had questions, but apparently they did not ask them.

Councilor Heldmeyer suggested that there were “a whole lot of red herrings being thrown out tonight in response to a completely staff-generated plan. This is something that staff has been wanting to do for a long time. They wanted to codify what they do, their expertise, in this plan.”

Councilor Heldmeyer moved to postpone this to the December meeting.

Councilor Heldmeyer pointed out that this will give people six weeks to get their questions answered.

Councilor Chavez seconded the motion.

Councilor Chavez asked staff to again come up with language requiring a review of the ordinance within one year.

Councilor Ortiz objected to the motion to postpone. He said Councilors need to take a stand on whether “we’re going to start putting in laws for law’s sake, or are we going to start working with people?” He said he could think of at least two likely scenarios in which this ordinance would affect someone that it was not intended to affect.

The motion to postpone failed to pass on the following Roll Call vote:

For: Councilor Coss; Councilor Heldmeyer; Councilor Chavez.

Against: Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger.

**Councilor Heldmeyer withdrew her original motion for approval.
Councilor Chavez withdrew his second.**

Councilor Lopez moved to not adopt this ordinance.

Councilor Ortiz, parliamentarian, said such a motion was not necessary now that the ordinance had been withdrawn.

Councilor Pfeffer stated that he did not think this ordinance would codify what the traffic engineer has been doing to date; rather, he thought it would greatly expand that. He said it would include traffic calming, "which is a discussion we haven't had," and it was unclear in terms of its regulations.

Councilor Pfeffer said he thought it would be wise to ask staff to come forward with a new ordinance that codifies what has been done to date "with an eye to working with us in terms of some rational improvements and helpful improvements."

Councilor Coss responded by pointing out, "I think with Councilor Heldmeyer and Councilor Chavez sponsoring this, and staff working on it, we just had that opportunity. And it's been around for months, and tonight we killed it. I would be reluctant to work on it again."

Mayor Delgado responded, "All right. Let's move on, then."

**CONSIDERATION OF BILL NO. 2003-35: ADOPTION OF ORDINANCE
NO. 2003- . (Councilor Heldmeyer)
A Resolution Amending Section 14-2.2 SFCC 1987 Regarding the
Powers and Duties of the Governing Body to Review Decisions of
the Planning Commission.**

City Planner Jeanne Price said this resolution would not change any of the powers and duties of the Governing Body; rather it rewrites it to make it somewhat clearer, and also clarifies that the minutes that come to the Governing Body from the Planning Commission meetings will be coming in draft form rather than as the final copy. She said that would allow them to be provided in a timely manner.

There were no speakers from the floor either for or against.

Councilor Heldmeyer moved for approval. Councilor Coss seconded the motion.

Councilor Heldmeyer noted that the Council recently considered a case that came to it from the Planning Commission; and in the course of reviewing that case, it was discovered that the ordinance as it stood was self-contradictory. She said it asked the Council to consider something within thirty days that wouldn't be available within thirty days, and this would simply substitute draft minutes for final minutes because the draft minutes are available within the thirty days.

Mayor Delgado observed that Planning Commissioners, at the meeting when this bill was being considered, expressed concern that the Council would be "trying to second-guess them, trying to do their job for them, and they work hard." He said he did not want to see this set up a situation of "us against them, and that we'll be continuing to look over their shoulder and wanting to look at what they're doing."

Ms. Price stated that, in the eight years she did development review, there was one case. She said this doesn't come up very often.

Councilor Ortiz asked Ms. Price what the consensus of the Planning Commission was with respect to these proposed changes, and what were the issues brought up by the Commission.

Ms. Price referred to her response in the packet. She said, "They were very concerned that they were being second-guessed, and they didn't want to be unappreciated. I think the thing they were referring to was the water budget one that was called up. I don't know the particulars, but there was some water budget decision that they made that this body then reversed, and I think they were still kind of in shock about that."

Councilor Ortiz asked Ms. Price if that was her opinion, or was that the consensus, and Ms. Price responded that she supposed it was her opinion. She commented that it has been a while since this happened, but added that she wrote the cover memorandum right after the meeting. She said, "What they asked me to do was include it in your written memo."

Councilor Ortiz said he did not read the existing language any different from the proposed language, so the question was, "If it's not broke, why fix it?" He disagreed with Councilor Heldmeyer's interpretation that the Council needs to have approved minutes. Without the strikeout language in paragraph D, he noted that it would have said: "In exercising the powers set forth herein, after reviewing the minutes of the Planning Commission meeting, may reverse or

affirm wholly or partly....” He said he did not see any reference to “duly approved” or “approved” minutes.

Councilor Heldmeyer clarified that this change was made partially at the request of Assistant City Attorney Anne Lovely, who read the words at the bottom of page one (“the governing body shall received duly executed copies of the minutes”) to mean “approved minutes” by the Planning Commission. She said Ms. Lovely’s interpretation was that all references to minutes in the document referred to those duly executed minutes, which the Council cannot get within the required 30-day period.

Councilor Ortiz suggested deleting the words “duly executed” in paragraph 2, then.

Councilor Wurzbarger said that, the way she reads this, “I don’t infer that we have to have the minutes to make a decision. I read it that we have to get the minutes; we make a decision on any criteria we want.” She said she saw A(2) as separate from the other portions that say the Council can reverse what the Planning Commission does.

City Attorney Bruce Thompson responded that he didn’t think what staff has said was inconsistent with that: “I think under A2 I don’t disagree with Councilor Heldmeyer that it would require final duly executed minutes. I don’t see those minutes being a requirement for the City Council to take action with respect to what’s happened below. So I agree with both of you, and I agree with what my staff has already said.”

Councilor Wurzbarger agreed with Councilor Ortiz. She commented that she thought a title important, and the title of this ordinance “amends the section regarding the powers and duties of the Governing Body...to review their decisions.” She said she did not want to change the way the Council reviews the Planning Commission decisions: “I think we’re doing fine with it. That way, they know that what we’ve been doing is what we’re doing.”

Councilor Heldmeyer withdrew her motion for approval.

Councilor Heldmeyer moved to postpone this to November 12; and in the interim, staff, including legal staff, should come up with language that reflects the conversation here tonight, and continues to give the Council the power it has had as long as she can remember, but does so in a way that Council is given the information it needs to make that decision, and that information is considered to be the appropriate information to make that decision.

Councilor Coss withdrew his second to the motion for approval and seconded the motion to postpone.

Councilor Ortiz opposed the motion to postpone, inasmuch as he had language addressing the alleged concern. He said he referred to it as “alleged” because Councilor Heldmeyer “is raising hearsay about Anne Lovely, who is not here.”

Councilor Ortiz suggested adding, after “duly executed,” or draft; and that after “commission,” add, as soon as they are available.

Councilor Ortiz said he thought that would “cover the whole enchilada on this.”

The motion to postpone failed on the following Roll Call vote:

For: Councilor Heldmeyer; Councilor Chavez; Councilor Coss.

Against: Councilor Lopez; Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger.

Councilor Ortiz moved to add, on line 24 to the existing language, after “executed,” or draft; and at the end of line 1 on page 2, after “commission,” add as soon as they are available.

Councilor Wurzburger seconded the motion.

Councilor Pfeffer asked Councilor Ortiz if his motion included not making any other changes as indicated.

Councilor Ortiz added to his motion, “with no other changes, deletions or additions to the existing language.”

The motion by Councilor Ortiz failed on the following Roll Call vote, requiring five votes to pass:

For: Councilor Ortiz; Councilor Pfeffer; Councilor Wurzburger.

Against: Councilor Lopez; Councilor Chavez; Councilor Coss.

Abstaining: Councilor Heldmeyer.

COMMUNICATIONS FROM THE GOVERNING BODY (Cont’d)

Councilor Ortiz

Councilor Ortiz asked the City Manager and City Attorney to look into the feasibility or the propriety of having an executive session at the next available Finance Committee to discuss the impasse that the City has had with all three of

the City's union; and if that is not practicable or legal under the Open Meetings Act, he would ask Mr. Romero to report to the Finance Committee on the status of the negotiations with AFSCME, the Firefighters and Police unions, and in particular he would ask for the provisions that are at impasse, and the dollar amounts that are involved, and the status of where the City is at with respect to mediation.

ADJOURN

Its business completed, the Governing Body adjourned the meeting at approximately 9:00 p.m.

Approved by:

Mayor Larry A. Delgado

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully Submitted:

Judith S. Beatty, City Council Reporter